August 19, 2005

Ms. Janice Sedlak
Washington State Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Comments on the Preliminary Draft National Pollutant Discharge Elimination System (NPDES) Phase II Permit

Dear Ms. Sedlak:

Thank you for the opportunity to comment on the draft preliminary NPDES Phase II permit. Please consider our comments on the Preliminary Draft, which are attached.

I encourage Ecology to consider individual responses to our concerns (in writing or as part of a joint work session) as part of their responsiveness program. I believe given the complexity of the issues and potential for significant impacts, this detail is warranted. I look forward to hearing from you. Ecology's responses are critical to Thurston County as we continue to work toward Phase 2 implementation.

If you have questions regarding our comments, please contact me at 360-754-4275 or at bachmej@co.thurston.wa.us or Barbara Wood at 360-754-3355 Ext 6809 or via email at woodba@co.thurston.wa.us.

Sincerely,

Jim Bachmeier
Water Resources Manager

cc: Barbara Wood

Enclosure

General Permit Comments

Based on other regulatory interactions between Ecology and the County, there is concern that Phase II Permittees' applications, and required submittals to Ecology will not receive a timely review and approval. Does Ecology have plans to hire additional staff to provide adequate review within a timely manner? Or does Ecology have any plans to develop guidelines for staff and Permittees as a tool to evaluate if the Permittee's program is sufficient to meet the requirements of the Clean Water Act? Absent any guidance or tool for staff, there is concern that different reviewers will have varying levels of expertise and experience which could lead to inconsistency among reviewers, and ultimately differing requirements for the various NPDES Phase I and II permittees. Please consider drafting a document similar to the *Draft Implementation Plan for the Revisions to Chapter 173-218 WAC, Underground Injection Control Program and Chapter 173-216 WAC, State Waste Discharge Program*. This is a useful document and could be used as a template for something similar for the NPDES Phase I and II permit program rules.

Also, the County is concerned with the proposed deadlines of the different elements in the Phase II permit to be in compliance with their respective permit. For comparison, please provide information on the status of all Phase I permittees and their ability to be in compliance with Phase I requirements over the previous five years of permit coverage. That information should be used to determine appropriate time-lines for Phase II Permittees to develop their program to be in compliance with their permit.

Comments on the 2005 Washington State Department of Ecology Stormwater Manual for Western Washington, a supporting document to the NPDES Phase II permit.

The Phase II permit assumes that Phase II Permittees have already updated and adopted a revised stormwater manual that is equivalent to the 2001 Ecology Stormwater Management Manual for Western Washington (SMMWW) (updated 2005). Has Ecology determined an appropriate phase-in time for the new Ecology stormwater manual in conjunction with the Phase II permit?

Thurston County supports the document; *Proposed Flow Control Standard for Highly Urbanized Drainage Basins*, a Department of Ecology Discussion Paper that addresses flow control requirements for western Washington. This document recognizes that the current flow control requirement (Pre-European, assumed to be forested) for new construction may not be appropriate for all new development, in all geographical areas of western Washington.

In Thurston County, our geology and soils promote infiltration in many geographical areas of the NPDES Phase II areas. As we currently understand, all of our infiltration UICs (assuming the non-endangerment standard and be registered) will be regulated under the proposed *Draft Underground Injection Control Program, Chapter 173-218 WAC* and the *Draft Determination of Treatment and Source Control for UIC Wells in Washington State (July 2005)*, and not the NPDES Phase II permit.

However, the latest information on the UIC rules includes the proposal to include UIC wells in a State Waste Discharge Permit (Aug 16, 2005 workshop in Longview), and the Stormwater Management Manual for Eastern Washington (1-13, line 7) states that "Jurisdictions applying for coverage under the Phase II Municipal Stormwater NPDES Permit will receive a combined NPDES State Waste Discharge Permit."

Please provide clarification of the relationship between NPDES Phase I and II and the UIC rules under revision?

Specific Permit Comments

S.2. Authorized Discharges

Pg 5, line 32 states "This permit does not authorize *Illicit Discharges* except as allowed in Special Condition S7.C3. *IIIicit Discharges Detection and Elimination* (IDDE), nor does it relieve entities responsible for illicit discharges, including spills of oil or hazardous substances…".

Phase II Permittees should not be held legally responsible for another entities illegal discharge into the MS4 if they have an IDDE program in place and initiate compliance action as the circumstances dictate.

S.4. TMDL

Pg 6-7.

Including Total Maximum Daily Load (TMDL) requirements in the NPDES permit process creates an additional workload on staff at Ecology and the Permittees.

Ecology should provide a timeline to phase-in the TMDL requirements in the Phase II permit process that are reasonable and practicable.

Additionally, Ecology staff should engage all affected Permittees in the development of any TMDL within their jurisdiction early in the process to avoid a delay in the water clean-up plan development and implementation phase. All implementation actions must be supported by Best Available Science.

S.4.D

Pg 7, line 20. "The Department may modify this permit to incorporate requirements from TMDLs completed after the issuance of this permit if the Department determines implementation of actions, monitoring or reporting necessary to demonstrate reasonable further progress toward achieving TMDL waste load allocations, and other targets, are not occurring and must be implemented during the term of this permit."

What criteria is Ecology proposing to utilize to determine if "reasonable" progress is being achieved toward TMDL waste load allocations? Ecology should develop guidance that defines "reasonable" and specifies goals for development and implementation of TMDL limits.

S.5. Compliance with Standards

S.5.B

Pg 8, line 1. "…for all existing stormwater discharges each Permittee is required to reduce the discharge of pollutants to the *maximum extent practicable* (MEP)."

This requirement needs clarification. The primary issue with this requirement is first the stormwater facilities and discharges have to be identified, as required in the Permittee's stormwater management program (SMP). Following identification, the facility could then be evaluated and then prioritized as a potential retrofit action.

Ecology should provide guidance that addresses what thresholds require a Phase II Permittee to retrofit existing stormwater facilities to current standards. Any guidance should specify a phase-in requirement for all existing stormwater facilities and discharges that meet an identified threshold and then should be considered for a retrofit.

As a note, Ecology should recognize that the majority of existing stormwater facilities and resulting discharges were built prior to any water quality standards and are most often in the ultra-urban areas where retrofitting an existing stormwater facility would not be practicable. How will Ecology determine if any retrofit is practicable and/or reducing the pollutants to the MEP?

S.5.C.2

Pg. 8, line 39. states that "If…site specific information…types of BMPs and design criteria for BMPs required under S7.C.4…are not sufficient to protect beneficial use of waters of the state...then additional controls necessary to protect…must be in place prior to the discharge from the new stormwater source or outfall."

This language needs clarification. It reads like the Permittee has chosen the demonstrative approach as detailed in the 2001(updated 2005) SMMWW, vs. the presumptive approach that has a suite of approved BMPs, and is assumed to be in compliance with the Clean Water Act.

Further, S.7.C.4.a.iii states that "Permittees who chose to use site planning process, and BMP selection and design criteria in the 2005 Stormwater Management Manual for Western Washington, or equivalent…may cite this choice as their sole documentation to meet this requirement."

Who or what determines if the site specific design, BMPs, etc. are not sufficient to meet the requirement of S.7.C.4?

S.5.D

Pg. 8, line 5. "Ecology may modify or revoke and reissue this general permit in accordance with General Condition G14., if Ecology becomes aware of additional control measures, management practices or other options beyond what is required in this permit that are necessary to reduce the discharge of pollutants to the MEP or to protect water quality."

While the above language may be appropriate for legal reasons, it could have implications for the Permittee that were not considered while developing their SMP. Phase I and II Permittees require consistency and certainty that permit requirements will be apparent and predictable, and not changed during the permit period.

Examples of more appropriate language that would give more certainty to the Permittees could be the insertion in the language "…at the time of permit renewal…" or "…when new best available science (BAS) is incorporated into Ecology's stormwater manual and at the time of permit removal…"

S.6. Monitoring

The Phase II permit directs Permittees to evaluate the effectiveness of their SMP. Ecology's current proposal for monitoring receiving waters would not provide information for local jurisdictions to improve their NPDES program because stormwater discharged through the MS4 would not be discernable from other sources of pollutants in the receiving waters. Receiving waters collect runoff from multiple non-point sources. It would be unreasonable to evaluate the effectiveness of a SMP when other pollutants are entering the water body in the rural and headwater areas where there is not NPDES requirements to control non-point pollution.

The County does believe that including water quality data at the end of the five year term could be an effective way for Ecology to collect and manage water quality data for their statewide assessments (301 and 303(d) lists).

Pg. 9, line 17. Should Ecology require integrated, collaborative, WRIA-scale monitoring programs?

Ecology should not require a WRIA-scale monitoring program unless the permit is issued at the same scale, and all jurisdictions within the WRIA have a NPDES permit requirement, and have agreed to coordinate their permit requirements.

A watershed based NPDES permit is an option that EPA promotes and supports. Does Ecology have any plans to provide a watershed based permit option to Permittees?

Pg. 9, line 19. "Or are independent monitoring programs could be adequate to develop the information basis for providing feedback on SMPs."

This question implies that Ecology will review and analyze monitoring (program, not water quality) data from all Phase I and II Permittees for adaptive management of all SMPs in the state. Is that assumption correct? If yes, then how will the data be analyzed and what will be the process and timeline for identified actions, if necessary, in relation to the permit timelines?

S.6.A.1

Pg. 9, line 36. Ecology's stated objectives include the effectiveness of the permit and the Permittee's SMP in protecting water quality and beneficial uses.

The assumption is that if the SMP that follows the presumptive approach, is approved by Ecology, and the permit issued, then the program will be effective at preventing further degradation of water quality and the identified beneficial uses in the basins where the SMP is implemented. Is that assumption incorrect?

S.6.A

Pg. 10, line 2. "The monitoring program shall also include BMP effectiveness monitoring."

It is assumed that if the Permittee adopts the presumptive approach, as stated in the 2005 SMMWW, and utilizes approved BMPs, that those BMPs have been evaluated for their effectiveness and approved for use by Permittees.

BMP effectiveness monitoring should only be required if the Permittee selects the demonstrative approach where the BMP is experimental and the effectiveness of the BMP is unknown.

Pg. 10, line 4. "The monitoring program shall be used to support the adaptive management process and lead to refinements of the SMP."

The assumption with monitoring data is that the Permittee will use it to improve their SMP and that Ecology will not be using the data to evaluate the SMP. Is that assumption correct?

S.6.B

"Permittees may choose to collaborate with other Phase I and II Permittees…in the WRIA"

If Permittees chose to coordinate their monitoring efforts at the basin, or another watershed scale, then Ecology should not require S.6.B.1a-c. This places an additional layer of requirements on Permittees, especially if the jurisdictions currently have agreements in place for collaborative monitoring efforts.

S.6.C

"Other than water quality monitoring required under S.4. (TMDL), no monitoring is required to be conducted during this permit term."

This statement is unclear. Does it infer that only the SMP needs to be developed during the initial permit issuance and permit term?

S.7. Stormwater Management Program

Pg. 11, Text box. *The Phase I and II SMP outline should be consistent with each other. The reporting outline should also be consistent between Phase I and II.*

S.7.A.2

Pg. 12, line 1. *The goal for development and implementation of the SMP contained in the permit language should be no less than five years from the effective date of the permit.*

S.7.3.i

Pg. 15, line 2. "Effectively prohibit all types of non-stormwater discharges into the MS4…"

The Permittee has no direct control if another entity discharges into their MS, and won't be able to determine if the non-stormwater discharge is a significant source of pollution until the stormwater facility and discharges are located, mapped and the IDDE program is developed.

Monitoring following the mapping element would then provide data on any non-stormwater discharges, and if they warrant being classified as a significant source of pollutants.

The Permittee should only be held liable if the illicit discharge is known, and fails to act.

Pg. 15, lines 15 and 28. *The Permittee has no control over natural events (e.g., rising groundwater and springs). Those non-stormwater discharges should be removed as categories.*

S.7.3

Pg. 16, Line 11. "Screening for illicit discharges shall be conducted using: Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments, Center for Watershed Protection, October 2004, or an equivalent methodology."

While the manual is a very good tool, it should not be the required methodology. Different Permittees will have varying need to detect illicit discharges based on their land-use and stormwater facilities. Additionally, jurisdictions may have a program in place that accomplishes the goal of identifying IDDEs.

S.7.C.iii

Pg. 16, line 16. *The procedures for reporting and correcting or removing illicit connections and other illicit discharges should not dictate the times required for specific actions. Many jurisdictions currently have procedures in place, and any changes to those procedures would require additional staff time and resources to revise.*

S.9. Reporting Requirements

The report format should be the same as required for the Phase I jurisdictions. It is unclear if Ecology is going to require specific software for submission of reports (Appendix 5 placeholder), Ecology should provide an outline of any proposed reporting requirements for clarification.

If a specific software will be required, then it should be able to provide a complete permit data management system where reporting in a specific format is a secondary function.

Appendix 1: Minimum Technical Requirements for New Development and Redevelopment.

Pg. 2. The requirement to treat the conversion of graveled areas to asphalt regarded as "new construction" seems to contradict the previous 1992 Ecology stormwater manual that regarded the conversion from gravel to asphalt/concrete a BMP for erosion and sediment control. The conversion will not create more impervious area, for the gravel bed is typically compacted and considered impervious already. This activity should be placed in the category of "existing" infrastructure where a stormwater retrofit could be completed during the conversion from gravel to asphalt/concrete.